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IN THE

Supreme Court of the United States

October Term, 1952
No. 269

THE CITY OF LOS ANGELES, a municipal corporation, and THE COUNCIL OF THE CITY OF LOS ANGELES,

Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES,

Respondent.

PETITIONERS' REPLY BRIEF.

THE CITY OF LOS ANGELES AND
THE COUNCIL OF THE CITY OF
LOS ANGELES,

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PETITIONERS' REPLY BRIEF.

Introductory Statement.

Respondents concede the existence of a federal question —they attempt merely to minimize its substance and importance (Resp. Br. p. 25).

Although petitioners do not wish to unduly burden this Honorable Court, they would be derelict in their duty if certain erroneous statements contained in Respondent's Brief filed herein were not answered. Stated as briefly as possible, they are:

(1) Respondent attempts, by means of distortion and confusion, to becloud the real issues presented by the petition. It would have this Court believe that the City claims Congress granted to it power to compel the local

Housing Authority to abandon its public functions, and that this is being accomplished under the guise of the City discontinuing one of its own activities (Resp. Br. p. 2, and Point I, p. 10).

Nothing could be further from the truth (City's Brief in the Court below and Petition for Writ of Certiorari). The City has never, by any act, sought to compel the Housing Authority to do anything. No compulsion has ever been directly exerted by the City against the Housing Authority. The City has acted solely and wholly within the sphere of its own operations under the United States Housing Act of 1937, Public Law 137, and the appropriate state housing laws. The true fact is that the compulsion, which may ultimately be exerted against the Housing Authority, is the result of the operation of law —flowing from an act performed by the City within its proper limits.

(2) Respondent states that Public Law 137 is not a grant of power to the City (Resp. Br. p. 10). Your petitioners have never contended that the power granted was more than to create the condition upon which the federal legislation became operative and its effect binding upon the federal agency. Our contention is and has always been, that *when* the City rejects a project, the Public Housing Administration is thereafter prevented from authorizing the construction or further construction of such project (Public Law 137) (Pet. for Cert., Point II). It should be noted that all construction contracts must be approved by the Public Housing Administration [Pet. for Writ of Mandate, Ex. 5, Sec. 106].

(3) Respondent states that Public Law 137 "from which the asserted power of nullification is drawn, being

an appropriation measure for the fiscal year which ended June 30, 1952, is now *functus officio"* (Resp. Br. p. 22). The term *"functus officio"* is defined in Black's Law Dictionary, 3rd Edition, as meaning "having fulfilled the function, discharged the office, or accomplished the purpose, and therefore, of no further force or authority." It, therefore, appears that respondent considers the City's contention in this respect to be moot.

In reply your petitioners wish to direct the attention of this Honorable Court to two facts. First, the City rejected the projects here involved on December 26, 1951—during the effective life of Public Law 137 [R. 41]. Second, the Independent Offices Appropriation Act, 1953 (Public Law 455, 82nd Congress, C. 578, 2nd session) which is currently in effect, continues the prohibition (contained in Public Law 137) against authorizing the construction of projects which have been rejected. In addition to the foregoing prohibition against authorizing further construction thereof, an additional prohibition is contained in the Supplemental Appropriation Act, 1953 (Public Law 547, 82nd Congress, C. 758, 2nd session) prohibiting the use of any of the funds provided by that act for the payment of "administrative expenses or to pay salaries to any employee within the Public Housing Administration or for any other purpose" after a project has been rejected and a tender made to the United States reimbursing it for all federal funds advanced prior to such cancellation. From the foregoing it follows that respondent's contention in this respect is not well taken.

(4) Respondent asserts that the state has *withheld* from the City, power to reject an initiated project. It carefully and judiciously uses the word "withheld" and does not contend that such power may not be implied or

has been forbidden. It should be noted that *only* the City may initiate a project after *it* makes a finding that the public welfare requires it, and also that the state has not specifically denied the City the power of rejection. The power to reject is impliedly and inseparably a part of the exclusive power of the City to "initiate,"—especially when changed conditions and the public welfare warrant its exercise. We submit that the City may validly exercise this power as an administrative arm of the state. This is so because the policy of the state is not only to construct low-rent housing, but to discontinue such construction where and when the public welfare no longer requires it. Any other construction of the state law would result in a wasteful expenditure of public funds and would be *contra* to the declared policy of the state [Pet. for Reh. in Cal. S. Ct., Point III; R. 138].

(5) Respondent asserts (Resp. Br. pp. 10-11) that if Congress intended to recognize the City's rejection (Public Law 137), a procedure to accomplish such rejection would have been provided. Such contention is utterly devoid of merit because

1. If the City is acting as a city, the City Charter and State Constitution provide ample procedures;
2. If the City is acting as an administrative arm of the state (as contended by respondent—Resp. Br. p. 14, footnote 5), the state law (Housing Cooperation Law, Sec. 7, now Health and Safety Code, Sec. 34521) provides the method.

(6) Respondent attempts to support its contention that Public Law 137 does not permit rejection of a project, by the assertion that the U. S. Housing Act of 1937, as amended, leaves all determinations in respect to low-rent

housing to local law,—except for the supplying of financial aid (Resp. Br. p. 12). At pages 13-14 of its brief, respondent states:

> "If they are right, the congress for the first time since Federal aid to public housing began has injected itself into the local field and sought to deal with matters of local policy and regulation heretofore left to the states."

Such contention is completely erroneous. The fact is that Congress is vitally interested in many local aspects of low-rent housing and has retained control of many local phases of it. For instance, what could be of greater local concern than the question of who may occupy the low-rent housing projects after they are completed? Yet, the Congress has retained complete control over this matter (42 U. S. C. A. Sec. 1415(8)), just as it has retained the right and power to determine the conditions under which a project may be rejected. In addition, the federal government has retained control over wages to be paid to, and hours to be worked by, employees engaged in the development of projects (42 U. S. C. A. Sec. 1416).

(7) In order to escape the construction placed by petitioner upon Public Law 137 the respondent contends that said law was designed to remove a hiatus in respect of the rights of cities to "prevent initiation" of a housing project created by the 1949 amendments to the United States Housing Act. In support thereof it is asserted that as to projects initiated prior to March 1, 1949, the cities had no power to "prevent initiation" because the Act of 1937 did not give the cities that "local control" of "approval of the local housing agency's application for a preliminary loan" or require the execution of the "cooperation agreement required by the United States Public Housing Ad-

ministration." It is claimed that such "local control" to "prevent initiation" was accomplished by the 1949 amendments requiring such approval and execution of a cooperation agreement as a condition precedent to the development of a new housing project—that is that by refusal to approve of the application for a preliminary loan or refusal to enter into a cooperation agreement. "Local control" was thus conferred upon cities initiating housing projects after March 1, 1949. Respondent relies for support of this construction of the law upon the statement made by the committee of the House of Representatives quoted by it on page 17 of its brief in opposition to the petition. Such construction of the United States Housing Act is not only erroneous but also unfair.

One of the main objectives of the United States Housing Act, both before and after March 1, 1949, is the maintenance of the low-rent character of housing projects. This objective is accomplished by the making of either annual contributions or capital grants.

Before March 1, 1949, neither annual contributions nor capital grants could be made by the administration unless and until the City agreed to contribute in the form of cash, property or tax remissions at least 20% of the annual contributions provided or 20% of the development or acquisition cost and agreed to the elimination of unsafe or insanitary dwelling units substantially equal in number to the number of new units constructed (Tit. 42, U. S. C. A. Secs. 1410(a), 1411(a), and 1411(f)).

After March 1, 1949, substantially the same requirements were a condition precedent to the administration making annual contributions or capital grants (Tit. 42, U. S. C. A. Secs. 1410(a) and (h) and 1415(7)(b)). The 1949 amendments did, however, impose conditions

precedent upon the administration in respect to making "loans" and for the first time provided for preliminary loans (Tit. 42, U. S. C. A. Secs. 1410(a) and (h), 1415(7)(a) and (b)). Preliminary loans were authorized for the sole purpose of surveys and planning and the City was required to approve the application of the Housing Authority therefor (Sec. 1415(7)(a)). The making of a preliminary loan is not in any manner conditioned upon the premise that the contemplated housing project be completed. Therefore, there can be no hiatus as between cities undertaking the development and construction of housing projects before or after March 1, 1949.

That being so, there is no basis for the strained construction respondent seeks to place upon Public Law 137. That law permits the rejection of housing projects initiated before or after March 1, 1949. In drafting that law the Congress must have had in mind the definition of "initiated" as defined by Section 1402(15) as added in 1949. Considering this definition as applied to "initiated" as used in Public Law 137 it then follows that in enacting said law in 1951, the Congress intended that cities could reject housing projects upon which the administration had entered into annual contribution contracts with the local housing authority or had made capital grants.

(8) Respondent states, on page 19 of its brief, that "Nothing in the United States Housing Act of 1937 supports petitioners' assertion that it permits a city to terminate an initiated project . . ." And in the footnote at the bottom of the same page the following statement is made:

> "The contention which petitioners urge in this regard, depending on the Housing Act generally rather

> than on the specific power claimed to be conferred by Public Law 137, was not made below and was not passed upon by the State Supreme Court."

We submit that not only was such contention made below, but it was answered by respondent (petitioner below) and was passed upon by the California Supreme Court adversely to the City. It has always been the City's contention, in respect to its right to terminate any initiated project, that the declared policy of Congress in enacting the Housing Act of 1937 being to promote the general welfare of the nation by employing its funds and credit (Tit. 42, U. S. C. A., Sec. 1401), it was the intent of Congress that the federal government act only as a contributing or lending agency, uninterested in the actual construction of housing projects, and that neither the Act as originally adopted in 1937 nor as amended in 1949 require that the recipient of federal funds carry to completion any housing project for which federal funds have been advanced (Resp. Br. below, pp. 1-8, 56; Resp. Reply Br. below, p. 2). The Housing Authority replied to these contentions, arguing that the federal legislation requires that housing projects be completed (Pet. Clos. Br. below, pp. 7-11).

That the California Supreme Court passed upon this question is indicated by the following quoted portions of its opinion:

> ". . . it was not authorized by law, that after the City Council had declared the need, had given the requisite approvals of a project under state and federal law, and had undertaken binding commitments, it

would or could repudiate them." (38 Cal. 2d 866, 243 P. 2d 521.)

"Thus the Federal Act contemplates fulfillment of the objectives and the contracts." (38 Cal. 2d 867, 243 P. 2d 522.)

"Therefore, neither the state nor the federal law permits entire withdrawal from contracts . . ." (38 Cal. 2d 867, 243 P. 2d 522.)

In the Petition for Rehearing filed in the California Supreme Court, petitioners again urged the same contention by arguing that the United States Housing Act of 1937, as amended, permits a city to abandon a project upon a finding of its governing body, the City Council, that there no longer is any need for such project. It was there pointed out that the true policy of the Federal Act, as declared in Section 1 thereof, is to benefit the public health and welfare, and that since the determination of whether low-rent housing is needed to accomplish these aims was left to the exclusive determination of the City Council, it follows that a project may be terminated by the City Council upon a finding that the public interest does not require it. Any other or different interpretation of the Federal Act would be contrary to its declared policy and would result in an illegal and wasteful expenditure of public funds [Pet. for Reh. below, Points III and IV; R. 138, 140].

The Housing Authority filed an answer to the Petition for Rehearing in which it attempted to answer the above contentions [Ans. to Pet. for Reh. below, Points I and II; R. 151, 154].

(9) Respondent asserts that the construction of Public Law 137 by the California Supreme Court is the only one possible which does not engender serious constitutional doubts. Specifically, it is urged that the construction placed upon the law by the City results in the impairment of contracts in violation of the United States Constitution, Article I, Section 10 (Resp. Br. pp. 14-16), and that the Congress cannot authorize a state (which would also include a city) to impair the obligations of a contract.

We submit that aside from the fact that breach of a contract by a municipality does not constitute the enactment of a law impairing the obligation of a contract (*St. Paul Gaslight Co. v. City of St. Paul* (1900), 181 U. S. 142, 148, 149; 45 L. Ed. 788, 792; *Shawnee Sewerage and Drainage Co. v. Stearns* (1910), 220 U. S. 462, 471, 55 L. Ed. 544, 547), respondent is a state public body created solely to aid in the performance of a governmental function and as such has no contract rights which are protected against impairment. In *Butler v. Pennsylvania,* 51 U. S. 402, 13 L. Ed. 472, at 478, the court said:

> " 'The contracts designed to be protected by the tenth section of the first article of that instrument are contracts by which perfect rights, certain definite, fixed private rights of property, are vested. These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic or state government for the benefit of all, and from the necessity of the case, and according to universal understanding, to be varied or discontinued as the public good shall require.' "

See also:

County of Alameda v. Janssen (1940), 16 Cal. 2d 276, 284;

Grogan v. San Francisco (1861), 18 Cal. 590, 613.

The rule is the same when a city exercises its police or sovereign power, and the effect with respect to contracts is the same as though the power had been exercised by the state (*Laurel Hill Cemetery v. City and County of San Francisco* (1907), 152 Cal. 464).

It is also well settled by decision of this Honorable Court that respondent, being a creature of state statute, has no rights protected by the Federal Constitution.

See:

City of Pawhuska v. Pawhuska Oil and Gas Co. (1918), 250 U. S. 394, 397, *et seq.*, 63 L. Ed. 1054, 1056, 1057;

City of Trenton v. New Jersey (1922), 262 U. S. 183, 190, *et seq.*, 67 L. Ed. 937, 942, *et seq.*;

Williams v. Baltimore (1932), 289 U. S. 36, 40, 77 L. Ed. 1015, 1020.

(10) Erroneous statements in Respondent's Brief requiring correction and clarification:

(a) Respondent asserts that "so far as the federal legislation is concerned, *the determination* of local need is made and demonstrated by the Housing Authority, not the City." (Resp. Br. p. 21.) (Emphasis ours.)

Section 1415(7)(a)(ii), Title 42 of the United States Code is given as authority for the above statement.

Examination of this section in connection with the entire act discloses that it is the City, not the local authority, which makes the determination of local need. Once that need is declared by the Council, the authority demonstrates it to the Public Housing Administration in order to obtain a preliminary loan. The authority's contention in this respect is but another indication of its constant grasp for power which does not belong to it and which has never been granted to it.

(b) On the same page (21) of its Brief, respondent, in yet another attempt to demonstrate its power and independence of the will of the City Council or the people, states that "except for its power to prevent *initiation* in the ways to which we have referred, the City has been given no control over that development, construction or operation."

As petitioners have heretofore pointed out in the Petition for Writ of Certiorari, such contention has no basis in either the Federal or State Acts and is contra to the declared policy of those Acts. In addition, the California Supreme Court very clearly announced in its opinion that it was not directing the Writ of Mandate to specific matters since in many respects they are subject to the *discretionary* cooperative action of the City. Thus the Court clearly recognized the fact that the City does possess control beyond its power to prevent initiation of a project. (38 Cal. 2d 871, 243 P. 2d 524.) We submit, therefore, that respondent's contention in this respect is without merit.

Conclusion.

It is, therefore, respectfully submitted that since respondent concedes that there is a federal question involved, certiorari should be granted and the Writ of Mandate of the Supreme Court of California stayed pending final determination by this Honorable Court.

Respectfully submitted,

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